

HOUSE BILL 177

N1

(2lr0791)

ENROLLED BILL

— *Environmental Matters/Judicial Proceedings* —

Introduced by **Delegates McIntosh, Anderson, Beidle, Clippinger, Glenn, Hammen, Lafferty, Love, Mitchell, Oaks, B. Robinson, Sophocleus, Stein, and Washington**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Ground Leases – Registration – Failure to Register**

3 FOR the purpose of prohibiting a ground lease holder from collecting certain ground
4 rent payments, bringing a certain action, or obtaining a certain lien unless the
5 ground lease is registered with the State Department of Assessments and
6 Taxation and the ground lease holder has mailed a certain bill to certain
7 addresses; altering the required contents of certain notices; repealing a certain
8 deadline for registering a ground lease with the Department; repealing certain
9 provisions of law relating to the extinguishment of the reversionary interest of a
10 ground lease holder for failure to register the ground lease before a certain date;
11 ~~requiring the Department to prepare a certain Deed of Redemption that~~
12 ~~contains certain information; establishing the cost of recording a Deed of~~
13 ~~Redemption; requiring the clerk to forward a copy of a recorded Deed of~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



~~Redemption to the Department;~~ making certain conforming changes; establishing that certain ground lease extinguishment certificates are void and have no effect; requiring the Department, on request of a ground lease holder or leasehold tenant, to cause to be filed in the land records of the county in which a certain ground lease extinguishment certificate was filed, a certain notice that the extinguishment has been invalidated by a certain court decision and that the underlying leasehold interest remains in full force and effect; providing for the construction of this Act; and generally relating to ground leases.

9 BY repealing and reenacting, with amendments,

10 Article – Real Property

11 Section 3–102(a), 8–402.3(d) and (e)(3), 8–704, 8–705, 8–709, 8–710, 8–711,
12 ~~8–711~~, and 14–116.1(d)

13 Annotated Code of Maryland

14 (2010 Replacement Volume and 2011 Supplement)

15 BY repealing and reenacting, without amendments,

16 Article – Real Property

17 Section 8–402.3(c) and (e)(1), ~~and 8–703 8–703, and 8–711~~ and 8–703

18 Annotated Code of Maryland

19 (2010 Replacement Volume and 2011 Supplement)

20 BY repealing

21 Article – Real Property

22 Section 8–707, 8–708, and 14–116.1(c)

23 Annotated Code of Maryland

24 (2010 Replacement Volume and 2011 Supplement)

25 BY adding to

26 Article – Real Property

27 Section 8–707, ~~8–710~~, and 14–116.1(c)

28 Annotated Code of Maryland

29 (2010 Replacement Volume and 2011 Supplement)

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

32 **Article – Real Property**

33 3–102.

34 (a) (1) Any other instrument affecting property, including any contract for
35 the grant of property, or any subordination agreement establishing priorities between
36 interests in property may be recorded.

37 (2) The following instruments also may be recorded:

1 (i) Any notice of deferred property footage assessment for street
2 construction;

3 (ii) Any boundary survey plat signed and sealed by a
4 professional land surveyor or property line surveyor licensed in the State;

5 (iii) Any assumption agreement by which a person agrees to
6 assume the liability of a debt or other obligation secured by a mortgage or deed of
7 trust;

8 (iv) Any release of personal liability of a borrower or guarantor
9 under a mortgage or under a note or other obligation secured by a deed of trust;

10 (v) A ground rent redemption certificate or a ground rent
11 extinguishment certificate issued under § 8–110 of this article [or a ground lease
12 extinguishment certificate issued under § 8–708 of this article]; or

13 (vi) An affordable housing land trust agreement executed under
14 Title 14, Subtitle 5 of this article with any transfer of property for which an affordable
15 housing land trust has a reversionary interest.

16 (3) The recording of any instrument constitutes constructive notice
17 from the date of recording.

18 8–402.3.

19 (c) (1) Notwithstanding any provision of a ground lease giving the ground
20 lease holder the right to reenter, the establishment of a lien under this section is the
21 remedy for nonpayment of a ground rent.

22 (2) This section does not affect the right of a ground lease holder to
23 bring a civil action against the leasehold tenant seeking a money judgment for the
24 amount of the past due ground rent.

25 (d) **(1)** Subject to §§ 8–111 and 8–111.1 of this title **AND PARAGRAPH (2)**
26 **OF THIS SUBSECTION**, if a ground rent is unpaid 6 months after its due date, the
27 ground lease holder may obtain a lien under this section in the amount of the ground
28 rent due.

29 **(2) THE GROUND LEASE HOLDER MAY NOT OBTAIN A LIEN UNDER**
30 **THIS SECTION UNLESS:**

31 **(1) THE GROUND LEASE IS REGISTERED WITH THE STATE**
32 **DEPARTMENT OF ASSESSMENTS AND TAXATION UNDER SUBTITLE 7 OF THIS**
33 **TITLE; AND**

1 **(II) THE GROUND LEASE HOLDER HAS MAILED A BILL FOR**
 2 **THE PAYMENT DUE TO THE LAST KNOWN ADDRESS OF THE LEASEHOLD TENANT**
 3 **AND TO THE ADDRESS OF THE PROPERTY SUBJECT TO THE GROUND LEASE IN**
 4 **ACCORDANCE WITH § 14–116.1 OF THIS ARTICLE.**

5 (e) (1) A ground lease holder seeking to create a lien under this section
 6 shall give written notice to:

7 (i) The leasehold tenant; and

8 (ii) Each mortgagee or trustee of the property whose lien is on
 9 record.

10 (3) A notice under this subsection shall include:

11 (i) The name and address of the party seeking to create the
 12 lien;

13 (ii) A statement of intent to create a lien;

14 (iii) An identification of the ground lease;

15 (iv) **A STATEMENT THAT THE GROUND LEASE IS**
 16 **REGISTERED WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION;**

17 (v) The amount of ground rent alleged to be due;

18 [[v)] (VI) A description of the property sufficient to identify the
 19 property;

20 [[vi)] (VII) A statement that the party to whom notice is given
 21 under this subsection has the right to object to the establishment of a lien by filing a
 22 complaint in the circuit court and the right to a hearing;

23 [[vii)] (VIII) An explanation of the procedure to file a complaint
 24 and request a hearing; and

25 [[viii)] (IX) A statement that, unless the past due ground rent is
 26 paid or a complaint is filed under subsection (f) of this section within 45 days after the
 27 notice is served, a lien will be imposed on the property.

28 8–703.

29 (a) The Department shall maintain an online registry of properties that are
 30 subject to ground leases.

1 (b) The Department is not responsible for the completeness or accuracy of
2 the contents of the online registry.

3 8-704.

4 (a) A ground lease holder shall register a ground lease with the Department
5 by submitting:

6 (1) A registration form that the Department requires; and

7 (2) The registration fee for each ground lease as provided under
8 subsection (c) of this section.

9 (b) The registration form shall include:

10 (1) The premise address and tax identification number of the property
11 for which the ground lease was created;

12 (2) The name and address of the ground lease holder;

13 (3) The name and address of the leasehold tenant;

14 (4) The name and address of the person to whom the ground rent
15 payment is sent;

16 (5) The amount and payment dates of the ground rent installments;

17 (6) To the best of the ground lease holder's knowledge, a statement of
18 the range of years in which the ground lease was created; and

19 (7) The liber and folio information for the current ground rent deed of
20 record.

21 (c) The registration fee for a ground lease per ground lease holder is:

22 (1) \$10 for the first ground lease; and

23 (2) **[For] \$5 FOR** each additional ground lease[:

24 (i) \$3 before October 1, 2008;

25 (ii) \$4 on or after October 1, 2008 and before October 1, 2009;

26 and

27 (iii) \$5 on or after October 1, 2009].

28 8-705.

1 (a) The Department shall register a ground lease when the Department
2 receives:

3 (1) A registration form; and

4 (2) The appropriate registration fee for each ground lease.

5 (b) [(1)] If for any reason the Department is unable to register a ground
6 lease for which a registration form and appropriate fee has been submitted, the
7 Department shall notify the ground lease holder of that ground lease, within 30 days
8 of processing the registration form, of any information needed by the Department so as
9 to complete the registration.

10 [(2)] The ground lease holder shall have up to 30 days to supply the
11 needed information to the Department before any action may be taken under § 8-708
12 of this subtitle.]

13 [8-707.

14 (a) Except as provided in subsection (b) of this section, a ground lease holder
15 shall register a ground lease under this subtitle before September 30, 2010.

16 (b) If a ground lease holder is under a legal disability at the expiration of the
17 registration period under subsection (a) of this section, the ground lease holder has 2
18 years after the removal of the disability to register the ground lease.]

19 **8-707.**

20 **IF A GROUND LEASE IS NOT REGISTERED IN ACCORDANCE WITH THIS**
21 **SUBTITLE, THE GROUND LEASE HOLDER MAY NOT:**

22 **(1) COLLECT ANY GROUND RENT PAYMENTS DUE UNDER THE**
23 **GROUND LEASE;**

24 **(2) BRING A CIVIL ACTION AGAINST THE LEASEHOLD TENANT**
25 **~~SEEKING A MONEY JUDGMENT FOR THE AMOUNT OF ANY GROUND RENT DUE TO~~**
26 **ENFORCE ANY RIGHTS THE GROUND LEASE HOLDER MAY HAVE UNDER THE**
27 **GROUND LEASE; OR**

28 **(3) OBTAIN A LIEN UNDER § 8-402.3 OF THIS TITLE.**

29 [8-708.

1 (a) If a ground lease holder does not satisfy the requirements of § 8–707 of
2 this subtitle, the reversionary interest of the ground lease holder under the ground
3 lease is extinguished and ground rent is no longer payable to the ground lease holder.

4 (b) If a ground lease is extinguished under this section, on application of a
5 leasehold tenant, the Department shall issue to the leasehold tenant a ground lease
6 extinguishment certificate.

7 (c) The extinguishment of the ground lease is effective to conclusively vest a
8 fee simple title in the leasehold tenant, free and clear of any and all right, title, or
9 interest of the ground lease holder, any lien of a creditor of the ground lease holder,
10 and any person claiming by, through, or under the ground lease holder when the
11 leasehold tenant records the certificate in the land records of the county in which the
12 property is located.

13 (d) To the extent that the extinguishment of a ground lease under this
14 section creates income for the leasehold tenant, that income may not be considered in
15 the calculation of income for the purposes of determining eligibility for any State or
16 local program.

17 (e) If the legal disability of a ground lease holder is removed after a ground
18 lease is extinguished under this section:

19 (1) If the ground lease extinguishment certificate has been recorded,
20 the ground lease holder:

21 (i) Is entitled to receive from the former leasehold tenant the
22 redemption value of the ground lease; and

23 (ii) Has no claim on the property that had been subject to the
24 ground lease; and

25 (2) If the ground lease extinguishment certificate has not been
26 recorded, the ground lease holder:

27 (i) May reinstate the ground lease by registering the ground
28 lease with the Department within 2 years after the removal of the legal disability; and

29 (ii) Is not entitled to ground rent for the period of the legal
30 disability.

31 (f) If a ground lease is extinguished under this section and a ground lease
32 extinguishment certificate has not been recorded, a buyer of the property for which the
33 ground lease has been extinguished:

1 (1) May apply to the Department for a ground lease extinguishment
 2 certificate and file the certificate in the land records of the county in which the
 3 property is located; and

4 (2) Once the ground lease extinguishment certificate has been filed,
 5 may not be required to pay any security or any amount into an escrow account for the
 6 extinguished ground lease.]

7 ~~[8-709.] 8-708.~~

8 The Department shall work with the State Archives to coordinate the
 9 recordation, indexing, and linking of ground leases registered under this subtitle.

10 ~~[8-710.] 8-709.~~

11 (A) The Department shall credit all fees collected under this subtitle to the
 12 fund established under § 1-203.3 of the Corporations and Associations Article.

13 (B) Fees received shall be held in a ground lease registry account in that fund
 14 and shall help defray the costs of the registry created under this subtitle.

15 ~~§ 710.~~

16 ~~(A) THE DEPARTMENT SHALL PREPARE A ONE PAGE DEED OF~~
 17 ~~REDEMPTION THAT CONTAINS THE FOLLOWING INFORMATION:~~

18 ~~(1) THE ADDRESS AND TAX IDENTIFICATION NUMBER OF THE~~
 19 ~~PROPERTY FOR WHICH THE GROUND LEASE WAS CREATED;~~

20 ~~(2) THE NAME AND ADDRESS OF THE GROUND LEASE HOLDER;~~

21 ~~(3) THE NAME AND ADDRESS OF THE LEASEHOLD TENANT;~~

22 ~~(4) THE AMOUNT OF THE GROUND RENT INSTALLMENTS;~~

23 ~~(5) THE AMOUNT OF THE REDEMPTION;~~

24 ~~(6) A STATEMENT FROM THE SELLER GIVING A SPECIAL~~
 25 ~~WARRANTY DEED;~~

26 ~~(7) AN ACKNOWLEDGMENT UNDER § 4-204 OF THIS ARTICLE;~~

27 ~~AND~~

28 ~~(8) (1) THE LIBER AND FOLIO INFORMATION FOR THE~~
 29 ~~CURRENT GROUND RENT DEED OF RECORD; OR~~

~~(H) A STATEMENT UNDER OATH THAT THE CURRENT GROUND RENT OWNER HAS COLLECTED THE GROUND RENT FOR MORE THAN 20 YEARS WITHOUT PROTEST OR DISPUTE FROM ANY PERSON.~~

~~(B) (1) THE FEE FOR RECORDING A DEED OF REDEMPTION IS \$10.~~

~~(2) NO TAXES, STAMPS, RECORDING FEES, OR OTHER CHARGES MAY BE COLLECTED FOR RECORDING A DEED OF REDEMPTION OTHER THAN THE FEE STATED IN PARAGRAPH (1) OF THIS SUBSECTION.~~

~~(3) THE CLERK OF THE COUNTY IN WHICH THE DEED OF REDEMPTION IS RECORDED SHALL FORWARD A COPY OF THE DEED OF REDEMPTION TO THE DEPARTMENT.~~

~~[§ 711. 8-710.] § 710.~~

The Department shall adopt regulations to carry out this subtitle.

14-116.1.

[(c) No later than 60 days before a yearly or half-yearly installment payment of a ground rent is due, a ground lease holder shall mail to the last known address of the leasehold tenant a bill for the payment due.]

(C) A GROUND LEASE HOLDER MAY NOT COLLECT A YEARLY OR HALF-YEARLY INSTALLMENT PAYMENT OF A GROUND RENT DUE UNDER THE GROUND LEASE UNLESS:

(1) THE GROUND LEASE IS REGISTERED WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION UNDER TITLE 8, SUBTITLE 7 OF THIS ARTICLE; AND

(2) AT LEAST 60 DAYS BEFORE THE PAYMENT IS DUE, THE GROUND LEASE HOLDER MAILES A BILL TO THE LAST KNOWN ADDRESS OF THE LEASEHOLD TENANT AND TO THE ADDRESS OF THE PROPERTY SUBJECT TO THE GROUND LEASE.

(d) The bill shall include a notice in boldface type, at least as large as 14 point, in substantially the following form:

“NOTICE REQUIRED BY MARYLAND LAW

REGARDING YOUR GROUND RENT

1 This property (address) is subject to a ground lease. The annual payment on the
2 ground lease (“ground rent”) is \$(dollar amount), payable in yearly or half-yearly
3 installments on (date or dates).

4 The next ground rent payment is due (day, month, year) in the amount of \$(dollar
5 amount).

6 The payment of the ground rent should be sent to:
7 (name of ground lease holder)
8 (address)
9 (phone number)

10 NOTE REGARDING YOUR RIGHTS AND RESPONSIBILITIES UNDER
11 MARYLAND LAW:

12 **THE GROUND LEASE HOLDER IS REQUIRED TO REGISTER THE GROUND LEASE**
13 **WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION AND IS**
14 **PROHIBITED FROM COLLECTING GROUND RENT PAYMENTS UNLESS THE**
15 **GROUND LEASE IS REGISTERED. [As] IF THE GROUND LEASE IS REGISTERED, AS**
16 the owner of this property, you are obligated to pay the ground rent to the ground
17 lease holder. **TO DETERMINE WHETHER THE GROUND LEASE IS REGISTERED, YOU**
18 **MAY CHECK THE WEB SITE OF THE STATE DEPARTMENT OF ASSESSMENTS AND**
19 **TAXATION.** It is also your responsibility to notify the ground lease holder if you
20 change your address or transfer ownership of the property.

21 If you fail to pay the ground rent on time, you are still responsible for paying the
22 ground rent. In addition, the ground lease holder may take action to collect the past
23 due ground rent which may result ultimately in your loss of the property. Please note
24 that under Maryland law, a ground lease holder may demand not more than 3 years of
25 past due ground rent. If you fail to pay the ground rent on time, you should contact a
26 lawyer for advice.

27 As the owner of this property, you are entitled to redeem, or purchase, the ground
28 lease from the ground lease holder and obtain absolute ownership of the property. The
29 redemption amount is fixed by law but may also be negotiated with the ground lease
30 holder for a different amount. For information on redeeming the ground lease, contact
31 the ground lease holder. If the identity of the ground lease holder is unknown, the
32 State Department of Assessments and Taxation provides a process to redeem the
33 ground lease that may result in your obtaining absolute ownership of the property. If
34 you would like to obtain absolute ownership of this property, you should contact a
35 lawyer for advice.”.

36 SECTION 2. AND BE IT FURTHER ENACTED, That any ground lease
37 extinguishment certificate issued by the State Department of Assessments and
38 Taxation under former § 8–708 of the Real Property Article is void and has no effect.

1 SECTION 3. AND BE IT FURTHER ENACTED, That, if a ground lease
 2 extinguishment certificate issued under § 8–708 of the Real Property Article, as it
 3 existed immediately before the effective date of this Act, was filed in the land records,
 4 on request of the ground lease holder or the leasehold tenant, the State Department of
 5 Assessments and Taxation shall cause to be filed in the land records of the appropriate
 6 county a notice that states “The Certificate of Ground Lease Extinguishment, recorded
 7 (insert the appropriate month, day, and year) has been invalidated by the Maryland
 8 Court of Appeals pursuant to its holding in Muskin v. State Department of
 9 Assessments and Taxation, 422 Md. 544 (2011) and the underlying leasehold interest
 10 remains in full force and effect unless otherwise redeemed under applicable Maryland
 11 law.”

12 SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be
 13 construed to prohibit a ground lease holder who registers a ground lease under §
 14 8–704 of the Real Property Article, as enacted by Section 1 of this Act, after the
 15 effective date of this Act from collecting ground rent payments or taking any other
 16 action to enforce any rights under the ground lease, subject to § 8–111.1 of the Real
 17 Property Article, after the ground lease is registered.

18 SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take
 19 effect July 1, 2012.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.